



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The landlords were accompanied by their legal counsel.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy started in June 2008 and ended on April 30, 2017. The rent at the start of tenancy was \$800.00 and remained the same through the entire tenancy. The heating of the rental unit was by wood insert and the tenant was responsible for the cost of wood.

The tenant testified that shortly after the start of tenancy, sometime during September or October 2008, he noticed that the wood insert was not working efficiently and notified the landlord of the problem. The landlord visited the rental unit and instructed the tenant to use a concrete like substance to seal off some areas of the wood insert.

The tenant took the insert apart and found that he was unable to repair it as the scope of work was extensive in nature. The landlord stated that the insert could not be repaired and therefore he offered the tenant three options to heat the rental unit

1. Electrical upgrade
2. Place an insert into fireplace
3. Use the oil furnace

The tenant testified that the oil furnace was very old and appeared to not have been in use for a long time. The thermostat was also broken and therefore the tenant chose to refuse this option. The landlord testified that the tenant did not want to use the oil furnace because of the cost of oil.

Regarding the repair of the wood insert, the male landlord stated that it was unrepairable. The tenant refused this option as it was not providing sufficient heat for his family.

The tenant chose the electrical upgrade. The landlord had provided some electrical heaters, but the tenant found that they heated only a part of the home to accompany the main source of heating by the wood insert. Since the main source of heat was not available, the tenant purchased additional space heaters to ensure that the entire home was heated. The tenant stated that the electricity bill was extremely high and therefore he was claiming compensation towards the extra cost of electricity for heating the unit.

The landlord pointed out that the tenant had made a similar application In March 2017 and the arbitrator had dismissed the application with leave to reapply. The landlord also drew my attention to the amount of the tenant's monetary claim in that application which was \$4,592.00 but had increased to \$13,669.00 for the cost of electricity, in this application. The landlord stated that since the tenancy ended in April 2017 just one month after that hearing in March 2017, the increase in the amount of the monetary claim was unreasonable

The tenant explained that the earlier claim was calculated by his daughter and was much lower because it was based on three years of data. After the tenancy ended, he took the time to obtain 9 years worth of data to base his monetary claim on.

The tenant also explained the delay in making the claim. He stated that the female tenant is employed by the landlord and felt uncomfortable making this claim. She also feared the repercussions if any.

The tenant stated that he was not aware of his rights to enforce the landlord's responsibility to provide heating and therefore he first made this application at the end of tenancy and then again almost two years later.

The tenant provided tables of data to explain how he arrived at the quantum of his monetary claim.

Analysis

Based on the sworn testimony of both parties, I find that the tenancy started in June 2008 and as per the tenancy agreement, the heating was primarily by the wood insert and the tenant understood that he would be responsible for the cost of wood. Both parties agreed that the wood insert did not function properly and that the tenant was without heat. When attempts to repair it were unsuccessful, the tenant purchased additional space heaters at his own cost. The tenant is claiming the cost of the extra electricity that he was incurred, for the use of the heaters.

The testimony of the male landlord differed from the female landlord. The male landlord stated that the wood insert could not be repaired while the female landlord stated it was too expensive to repair. The wood insert was not repaired during the tenancy. However after the tenancy ended, the landlord had it repaired, and it is currently in use by the landlord's daughter who is occupying the rental unit.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Heat is an essential service and must be provided by the landlord. In this case, I find that the landlord should have had the wood insert repaired since it was repairable. The tenant would not have had to purchase space heaters and would not have incurred the high cost of electricity.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in inconvenience to the tenant and a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. A tenant may be entitled to reimbursement for loss of use of a facility even if the landlord made every effort to minimize disruption.

In this case at the start of tenancy the arrangement was for heating to be provided by the wood insert. This method did not work as the wood insert was nonfunctional. The landlord chose not to repair the wood insert which resulted in the tenant having to purchase space heaters and bear the cost of an inflated electricity bill.

I also note that the landlord had the wood insert repaired and rendered functional after the tenancy ended.

The tenancy continued for 9 years and the tenant chose to apply for the cost of electricity at the end of tenancy. This portion of his application was dismissed with leave to reapply and the tenant chose to wait for almost two years before he reapplied.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to address the issue in a timely fashion, or shortly after the electricity bills became due, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the landlord did not provide heating as agreed upon in the tenancy agreement. Heating is an essential service and the options provided by the landlord were not ideal. I find that the tenant was inconvenienced by the loss of heating and was forced to purchase space heaters and pay for the inflated electricity bills. Therefore I find that the tenant is entitled to nominal damages.

I find it appropriate to award the tenant \$3,000.00 as a minimal award towards the inconvenience suffered and the cost incurred.

Since the tenant is partially successful in his monetary claim I award the tenant the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$3,100.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order of \$3,100.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 09, 2019

Residential Tenancy Branch